

# EXHIBIT W

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

BAY POINT CAPITAL PARTNERS )  
II, LP, )  
Plaintiff, ) CRIMINAL ACTION FILE  
v. ) NO. 1:21-CV-00375-MLB  
HOPLITE, INC. ET AL, )  
Defendants. )

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BEFORE THE HONORABLE MICHAEL L. BROWN  
TRANSCRIPT OF PROCEEDINGS  
MARCH 31, 2021  
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Proceedings recorded by mechanical stenography  
and computer-aided transcript produced by

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1 But as far as Hoplite, Inc. is concerned, I don't  
2 believe it's stayed and I believe Your Honor can go forward as  
3 to Hoplite Inc. only.

4 THE COURT: Well, it does seem to me as though  
5 Hoplite, Inc. is still a viable entity here.

6 Which entity is it that you wanted the receiver  
7 against? All of them?

8 MR. WINSBERG: Originally, it was against all of  
9 them, because we didn't know who owned the collateral, so the  
10 concern obviously is that the order hasn't been complied with.

11 I mean, it's unrebutted at this point that Mr. Smith  
12 never produced his updated financials as required under your  
13 February 11th order.

14 It's also -- you can take notice of the fact that we  
15 got no additional bank statements, even from Hoplite, Inc.,  
16 which isn't in bankruptcy that Your Honor ordered at the  
17 hearing last -- on Wednesday. And we went back and looked at  
18 the transcript. So there's no dispute that Hoplite, Inc. has  
19 failed to comply with the order and the lesser remedy therefore  
20 fails. So Yes, Your Honor.

21 THE COURT: I think that's pretty clear to me. I  
22 think I embraced wholly the idea that I have to look for less  
23 restrictive means of doing this. And I think we have done that  
24 with great patience in tiny steps.

25 But, Mr. Cohan, I think they've made a good case, so

1 what you're asking me to do is to find today that there has --  
2 as to Hoplite, Inc. that I will assign a receiver because that  
3 has failed in regards to Hoplite, Inc.

4 Mr. Cohan, what do you say about that?

5 MR. COHAN: Well, I say a few things. First, again,  
6 I think that that is a material infringement on the rights of  
7 John Smith in violation of the automatic stay consistent with  
8 his Chapter 7 bankruptcy.

9 Two, I say, as a practical matter -- and I realize  
10 plaintiff and plaintiffs' lawyers are here asking for this  
11 relief, but you have John Smith in a bankruptcy, you have  
12 Hoplite Entertainment in a bankruptcy, and Hoplite, Inc., I  
13 understand, will be filing a bankruptcy -- it's imminent  
14 whatever that means.

15 And I don't -- and I think bankruptcy is effectively  
16 a receivership and I don't know what purpose it serves. And  
17 frankly, I think you'll almost be doing plaintiff a favor if  
18 you hold for a moment to see if, in fact, Hoplite, Inc. enters  
19 bankruptcy in the next day or two.

20 Because otherwise, what are they going to do?  
21 They're going to start spending money on a receivership.  
22 They're going to go out to California. They're going to start  
23 gathering information. And then there's going to be a  
24 bankruptcy and they're going to have to deal with the  
25 bankruptcy court anyway.

1 practical, because the money's not there, and bankruptcy is  
2 imminent for the company and why bother wasting money and  
3 effort when that's going to happen.

4 What does the plaintiff say about that? Do you want  
5 me to hold off and see if they enter bankruptcy?

6 MR. WINSBERG: At this point, no, Your Honor, because  
7 they may never do it.

8 THE COURT: Okay.

9 MR. WINSBERG: And the concern we have, Your Honor --  
10 I mean, again, just to step back for a second. Mr. Cohan talks  
11 but there's no evidence. We've had three evidentiary hearings,  
12 and at this point, you shouldn't accept the representations.

13 I will note, Your Honor, Your Honor sat through two  
14 hearings, including last week, Hoplite Entertainment's -- I  
15 have a copy of their bankruptcy petition they filed yesterday.  
16 Mr. Smith signs it as president.

17 And Mr. Cohan, himself, admitted at the last hearing  
18 he's running the business, so if they file bankruptcy, we'll  
19 deal with the bankruptcy case, but until then, if you leave him  
20 in charge, he's going to continue to ignore the Court's order,  
21 not comply with it and not even show up to explain himself,  
22 so --

23 THE COURT: Yes. I did have an order on all of that.  
24 And I think I have done enough to know that there is no other  
25 remedy available, so I will grant that.

1 Will you-all provide me a proposed order?

2 MR. WINSBERG: Yes, Your Honor. We will prepare a  
3 proposed order as to Hoplite, Inc. only.

4 THE COURT: Okay. If you get it to me tomorrow, I  
5 will sign it tomorrow.

6 MR. WINSBERG: Thank you, Your Honor.

7 MR. COHAN: There is, of course, one other issue  
8 which is a pretty big issue, and that's the Court's subject  
9 matter jurisdiction.

10 THE COURT: I have looked at that. I want you to  
11 know that I looked very hard at that. And it may be that there  
12 is a jurisdiction issue down the road. I haven't heard from  
13 the plaintiff. They believe, I think from what I heard last  
14 time, that there was -- they believe that they have an answer  
15 to it.

16 MR. COHAN: And I looked at the initial response,  
17 Your Honor, and basically what it says is you could still  
18 recover damages if they -- if it -- if whatever it is happens  
19 after the agreement is signed, nobody says otherwise, but you  
20 get to recover those damages because it's a breach of contract,  
21 not because it's a fraud and --

22 THE COURT: Right. But Ms. Peruach -- am I saying it  
23 right, Ms. Peruach?

24 MS. PEURACH: Yes.

25 THE COURT: Ms. Peruach had a response the other day